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U.S. PATENT & TRADEMARK OFFICE

August 20, 2004

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Office of the Solicitor
Director of the U.S. Patent and Trademark Office
P.O. Box 1450
Alexandria, Virginia 22313-1450

Appeal No. 2003-1746

Confirmation No. 2901

Re: U.S. Patent Application Serial No. 09/620,392 filed July 19, 2000
Inventors: Andrey BOUKHAROV *et al.*
Title: Plant Genome Sequence and Uses Thereof
Atty. Dkt: 16517.112

Sir:

Transmitted herewith for appropriate action by the U.S. Patent and Trademark Office, is a Request for Extension of Time to Seek Judicial Review under 37 C.F.R. § 1.304. It is respectfully requested that the attached postcard be stamped with the date of filing of these documents, and that it be returned to our courier.

It is not believed that any fees are due in conjunction with this filing. However, if any fees are required in the present application, then the Commissioner is hereby authorized to charge such fees to Arnold & Porter LLP Deposit Account No. 50-2387, referencing docket number 16517.112.

Sincerely,



Thomas E. Holsten (Reg. No. 46,098)
David R. Marsh (Reg. No. 41,408)

Enclosures

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Andrey BOUKHAROV *et al.*

Appeal No.: 2003-1746

Appln. No.: 09/620,392

Filed: July 19, 2000

Confirmation No. 2901

Art Unit: 1631

Examiner: S. ZHOU

Atty. Docket: 16517.112

For: **Plant Genome Sequence and Uses Thereof**

**Request for Extension of Time to Seek Judicial Review
under 37 C.F.R. § 1.304**

Mail Stop 8
Director of the U.S. Patent and Trademark Office
P.O. Box 1405
Alexandria, VA 22313-1450

Sir:

Appellant hereby requests that the time for seeking judicial review of the Board of Patent Appeals and Interferences ("Board") decision in the above-captioned appeal ("Decision") be extended under 37 CFR 1.304.

On June 30, 2004 the Office mailed a final decision by the Board in the above-captioned appeal ("*Ex parte Boukharov*").¹ In the Decision, the Board affirmed the Examiner's utility rejections of all the appealed claims under 35 U.S.C. § 101 and § 112, first paragraph.

¹ Appellant notes that the Patent Office cover sheet indicates that the Decision was mailed on July 1, 2004, however, the Board's stamp on the first page of the Decision indicates that the Decision was mailed on June 30, 2004. This request is filed within the two-month time period for seeking judicial review of both reported dates.

**I. The Time Period for Seeking Judicial Review Should Be Extended
Pending the Federal Circuit's Decision in *In re Fisher***

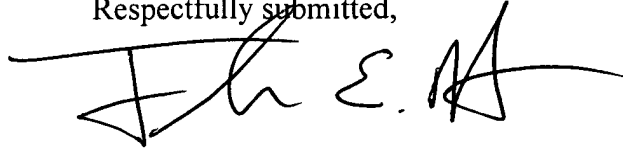
A patent applicant has two months from the date of the decision by the Board to seek judicial review of a decision by the Board. 37 C.F.R. § 1.304(a)(1). This time period is not extendable under 37 C.F.R. § 1.136. 37 C.F.R. § 1.304(a)(2). However, the Director may extend the time period for appeal “for good cause shown if requested in writing before the expiration of the period for filing an appeal or commencing a civil action.” 37 C.F.R. § 1.304(a)(3).

Appellant requests that the time period for seeking judicial review be extended until the United States Court of Appeals for the Federal Circuit (“Federal Circuit”) decides an appeal presenting a similar legal issue. On May 27, 2004, the Real Party in Interest in *Ex parte Boukharov* filed an appeal to the Federal Circuit in *In re Fisher*. (U.S. Appln No. 09/619,643, B.P.A.I. Appeal No. 2002-2046). *In re Fisher* presents a similar legal issue to the Federal Circuit to the legal issue decided by the Board in the above-captioned matter. In particular, *In re Fisher* presents the issue of the utility of partial nucleic acid molecules, such as Expressed Sequence Tags (ESTs) under 35 U.S.C. §§ 101 and 112.

Extending the time period for seeking judicial review of the present Decision would promote judicial and administrative efficiency by allowing the Federal Circuit to provide guidance on the issue of the utility of partial nucleic acid molecules, such as Expressed Sequence Tags (ESTs) under 35 U.S.C. §§ 101 and 112. For these reasons, Appellant respectfully requests that the time for seeking judicial review be extended

under 37 C.F.R. 1.304. Should the Commissioner require additional information, he is invited to contact the undersigned at the number provided below.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'D. R. Marsh', with a long horizontal line extending to the right.

David R. Marsh (Reg. No. 41,408)
Thomas E. Holsten (Reg. No. 46,098)

Date: August 20, 2004

Of Counsel
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